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IN THE

Supreme Court of the United States

PHIL CRAWFORD, Interim Field Office Director,
Immigration and Customs Enforcement, et al.,
Petitioners,

vs.

Sergio Suarez Martinez,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF *AMICI CURIAE* FOR RELIGIOUS ORGANIZATIONS IN SUPPORT OF RESPONDENT

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John J. Diiulio, Jr., Compassion "In Truth and Action": How Sacred and Secular Places Serve Civic Purposes, and What Washington Should – And Should Not – Do to Help, Speech Before the National Association of Evangelicals (Mar.7, 2001), *available at* http://www.whitehouse.gov/news/releases/ 2001/03/20010307-11.html 4

Mark Dow, *American Gulag: Inside U.S. Immigration Prisons* (2004) 7

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Episcopal Migration Ministries, Theological Premises, *available at* http://dfms.org/3687_32097_ENG_HTM.htm?menu=menu3204 ..... 17, 18

Evangelical Lutheran Church in America, What We Say About Public Life: Immigration (Nov. 16, 1998), *available at* http://www.elca.org/socialstatements/immigration/ 18

INS and the Executive Office for Immigration Review: Hearing Before the Subcomm. on Immigration & Claims of the House Comm. on the Judiciary, 107th Cong. 12, 13, 17

Lutheran Immigration and Refugee Service, America: A Freedom Country (2004), *available at* http://www.lirs.org/InfoRes/PDFs/Asylum Storybook.pdf 12

Lutheran Immigration and Refugee Service, Mission and Values, *available at* http://www.lirs.org/who/mission.htm 16

Yvette M. Mastin, Comment, *Sentenced to Purgatory: The Indefinite Detention of Mariel Cubans*, 2 Scholar 137 (2000) 7

Mandatory Detention, United States Conference of Catholic Bishops, Office of Migration & Refugee Services (Dec. 19, 2003), *available at* http://www.usccb.org/mrs/detention.htm 12

Mennonite Central Committee, U.S. Guide to Immigration, Biblical Reflection and Church Responses: Standing with Immigrants (2002), *available at* http://www.mennonitecc.ca/us/washington/immigration.html 18

National Council of Churches, 2002 General Assembly, Resolution After September 11, 2001: Public Policy Considerations for the

United States of America (adopted Nov. 16, 2002), *available at* http://www.ncccusa.org/news/02news97b.html 15, 20

Physicians for Human Rights Study, From Persecution to Prison: the Health Consequences of the Detention of Asylum Seekers (June 2003), *available at* http://www.phrusa.org/campaigns/asylum_network/detention_execsummary/detention_pdf.pdf 19

Religious Action Center of Reform Judaism, Issue in Focus: Immigration and Refugees (last updated Jan. 15, 2003), *available at* http://www.rac.org/issues/issueir.html 15, 18, 25

Resolution of the 73rd General Convention of The Episcopal Church, The Episcopal Church in Service to Refugees and Immigrants (July, 2000), *available at* http://www.churchpublishing.org/ general_convention/pdf_blue_2000/10-execcouncil.pdf 17

Review of Department of Justice Immigration Detention Policies: Hearing Before the Subcomm. on Immigration & Claims of the House Comm. on the Judiciary, 107th Cong. (2001) 4, 19

The Union of American Hebrew Congregations, A Resolution on Immigration Adopted by the General Assembly (Dec. 3, 1995), *available at* http://uahc.org/conv/adres/imm.html 17

INTEREST OF *AMICI CURIAE*[1]

Representatives of a diverse array of religious organizations in the United States unite here as *amici curiae* on behalf of Respondent Sergio Suarez Martinez. Notwithstanding any differences in opinion they may have regarding the circumstances, if any, under which indefinite detention may be imposed, ***all*** of these *amici* oppose the indefinite detention, based solely on an unreviewable administrative release determination, of a person who was legally paroled into the United States twenty-four years ago, has been and continues to be living in the United States, is subject to a removal order, yet has no legitimate expectation of removal within the reasonably foreseeable future. In the view of *amici*, indefinite detention under these circumstance offends fundamental moral and ethical principles shared by religious organizations throughout the world.

Individual statements of interest are provided in the Appendix to this Brief.

SUMMARY OF THE ARGUMENT

The religious organizations joining as *amici* herein are concerned that the indefinite detention of immigrant

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[1] In accordance with Supreme Court Rule 37.6, *amici curiae* represent that no party other than counsel for *amici* authored this brief in whole or in part, and no person or entity, other than *amici*, has made a monetary contribution to the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.3(a), Petitioners and Respondent have consented to the filing of this brief and appropriate letters of consent will be filed with the Clerk of the Court.

A full list of *amici* is included in the Appendix to this Brief.

parolees like Respondent Sergio Suarez Martinez, based solely on unreviewable administrative release determinations, deprives these immigrant parolees of their basic human rights. The government indefinitely detains these individuals in state or federal prison as a means of dispensing with them when, by reason of a criminal conviction, they have been ordered removed to a country of origin that will not accept them back. For an immigrant parolee who already has completed his criminal sentence and thereby paid his debt to society, there should be no mistaking that this so-called "indefinite detention" is no more than an unfair continuation of his punishment. And, it is a punishment that easily could last the rest of his life.

This type of punishment – imprisonment without the opportunity to plead one's case in front of a neutral judge at a reviewable proceeding – offends the moral values shared by a wide array of religious organizations, including *amici*. It is particularly disturbing where, as here, the government has at its disposal statutorily mandated alternatives to imprisonment, such as supervised release, which address all of the government's legitimate concerns, including national security.

Recently this Court embraced *amici*'s view as it relates to the indefinite imprisonment of lawful permanent aliens. Specifically, this Court held in *Zadvydas v. Davis*, 533 U.S. 678 (2001), that 8 U.S.C. §1231(a)(6) authorized the detention of a deportable former lawful permanent resident for only "a period reasonably necessary to bring about [an] alien's removal from the United States." 533 U.S. at 689. The Court's reasoning applies with equal force to Respondent Sergio Suarez Martinez, who has lived in the United States since he was paroled into the country twenty-four years ago, even though the government deems him an alien stopped at the border.

In light of the religious and moral imperative to bestow certain fundamental rights on immigrant parolees, including the right not to be imprisoned without due process, and in light of this Court's recent decision clarifying the importance of such rights, Mr. Martinez and other immigrant parolees in his situation must not be subjected to a de facto life sentence without the opportunity for a fair and meaningful hearing. Therefore, *amici* respectfully request that this Court affirm the Ninth Circuit decision below.

ARGUMENT

I. *AMICI*'S PERSPECTIVES ON THESE MORAL ISSUES WILL BE VALUABLE TO THE COURT'S CONSIDERATION OF THIS CASE.

This case presents the issue of whether 8 U.S.C. § 1231(a)(6) authorizes the indefinite detention of an inadmissible alien who was lawfully paroled into the United States in 1980 and has lived here since, but whom the government regards, under a legal fiction, to have been "stopped at the border." This issue involves not only questions of statutory and constitutional interpretation, but also moral and ethical questions. For example, the issue implicates questions of whether a person's loss of liberty constitutes impermissible punishment without crime, a wrongful treatment of a stranger fleeing persecution, or a violation of the dignity and inalienable rights that inhere in each human being.

In the view of *amici*, on moral and ethical issues such as these, religious organizations are an important source to supplement the advice of legislatures, the parties,

and non-religious organizations.[2] First, legislation does not always provide a clear and unequivocal answer to difficult or nuanced human rights questions. *See, e.g., Review of Department of Justice Immigration Detention Policies: Hearing Before the Subcomm. on Immigration & Claims of the House Comm. on the Judiciary*, 107th Cong. 43, 48-55 (2001) (statement of Rep. George W. Gekas, Chair, Subcomm. on Immigration & Claims) (offering into the record "[w]ithout objection" and thereby accepting the relevance to immigration issues of the testimony of Bishop Thomas Wenski, Auxiliary Bishop of Miami, National Conference of Catholic Bishops' Committee on Migration). Second, *amici*'s collective views provide an important guide as to the moral and ethical principles to which a multitude of this nation's citizens – indeed entire civilizations – aspire. Third, *amici* by their nature have experience and expertise in evaluating moral and ethical questions involving immigration, detention, and release.

Additionally, there is precedent for the Court looking to the views of expert authorities in the area of ethics or morality before resolving constitutional questions. In *Atkins v. Virginia*, for instance, this Court cited the brief of *amicus* United States Catholic Conference and other religious organizations as "additional evidence" of a broad "social and professional consensus" against the execution of persons with mental retardation. 536 U.S. 304, 316 n.21 (2002). Similarly, in *Stanford v. Kentucky*, four Justices considered the view of a similar coalition of religious groups in considering the constitutionality of the juvenile death penalty. 492 U.S. 361, 388 n.4 (1989) (Brennan, J., joined by Marshall, Blackmun, and Stevens, JJ., dissenting) (citing briefs of *amici* from various religious organizations including, but not limited to, American Baptist Churches, American Jewish Committee, General Assembly of the Presbyterian Church, United States Catholic Conference, United Methodist Church General Board of Church and Society); *cf. Thompson v. Oklahoma*, 487 U.S. 815, 830 (1988) (plurality opinion) (consulting professional organization sources).

Therefore, in light of the assistance these views may provide, this Court should consider the judgment of *amici* herein. As religious bodies and religion-affiliated organizations, these *amici* are uniquely qualified to comment on moral and ethical issues such as those presented by the potentially permanent detention of immigrant parolees.

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[2] The American people place great stock in the contribution religion makes to the public good. *See* John J. Diiulio, Jr., Compassion "In Truth and Action": How Sacred and Secular Places Serve Civic Purposes, and What Washington Should – And Should Not – Do to Help, Speech Before the National Association of Evangelicals (Mar. 7, 2001) (noting that, in the same week the President created the Office of Faith-Based and Community Initiatives, the Pew Charitable Trusts released a national poll showing that most Americans believe local churches, synagogues, and mosques, together with other charitable organizations, are "top problem-solving organizations" in their communities), *available at* http://www.whitehouse.gov/news/releases/2001/03/20010307-11.html.

II. MORAL AND RELIGIOUS AUTHORITY SUPPORT THE RIGHT OF IMMIGRANT PAROLEES NOT TO BE INDEFINITELY IMPRISONED EXCEPT IN NARROW CIRCUMSTANCES WITH STRONG PROCEDURAL PROTECTIONS.

A. Indefinite and Potentially Permanent Detention Constitutes Punishment of Individuals Who Already Have Paid Their Debt to Society.

The human rights values shared by *amici* mandate that all persons living within the United States have the inalienable right to be free from prolonged imprisonment or "indefinite detention" without due process of law. Indeed, the Constitution echoes this value, granting all "'persons' within the United States" the right to be free from punishment, or a deprivation of liberty, "without due process of law." U.S. Const. amend. V; *Zadvydas*, 533 U.S. at 693-94 (citing historical case precedent); *cf. id.* at 690 (explaining that "[f]reedom from imprisonment – from government custody,. detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause protects"). The current parole program – under which those, like Respondent, who have not yet been "admitted" into this country, but who cannot be removed to the country from which they fled and so instead are imprisoned indefinitely and without a meaningful hearing – is not consistent with *amici*'s human rights values or the constitutional mandate.

Notwithstanding the seemingly benign term "indefinite detention," there is no question that what immigrant parolees like Respondent face is punishment. *See Chi Thon Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999) (conceding that "[c]haracterizing prolonged

detention as anything other than punishment might be somewhat puzzling to [the detainee], who remained in jail under the same conditions as before the state released him, although his status had technically changed from that of a state inmate to an INS 'detainee'"). The facilities in which immigrant parolees are imprisoned include maximum-security federal and state prisons, local county jails ill-equipped to house inmates for long-term detention, and half-way houses. *See* Yvette M. Mastin, Comment, *Sentenced to Purgatory: The Indefinite Detention of Mariel Cubans*, 2 Scholar 137, 153-54 (2000). Those detained in federal and state correctional facilities are treated the same, if not worse, than the inmates serving criminal sentences. *See id.* at 155. Unlike the inmates serving criminal sentences, however, immigrant parolees have no determinate sentence, awaking each day uncertain as to when or even if they will be released. *See* Mark Dow, *American Gulag: Inside U.S. Immigration Prisons* 289 (2004) ("If I had to tell what it was like to visit the detainees in one sentence it would be this: It is like visiting people who are buried alive.").[3] Thus, in many ways, immigrant parolees receive a harsher punishment for having a particular country of origin than they do for

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[3] As one detainee recounted:

> I would like INS to get me in a plane, give me a parachute, and drop me in the jungle. Somewhere. I'll survive. I'd rather be in a jungle, in the desert, in the middle of the ocean, than be locked up. You know how much suffering you see here? You know what it is like to sit in here and you see your life waste away? Just doing nothing. Being fed like a cow. Because that's what we are – cattle.

Id. at 295.

committing a particular crime. *See Borrero v. Aljets*, 325 F.3d 1003, 1010 (8th Cir. 2003) (Heaney, J., dissenting) (opining that "[n]o matter how unpalatable Borrero's conduct may have been, he has served his time for his criminal acts. It is therefore inconceivable that we would condone the permanent imprisonment of someone simply because his birth country will not welcome him back"; adding that "[a] life sentence in prison [is] no less impermissible than the government's torture or summary execution of those aliens" (second alteration in original) (quotation marks omitted)).

Prolonged punishment is particularly disturbing when, as here, the immigrant parolee already has paid his debt to society by completing his criminal sentence.[4] Yet, under the current immigration parole program, he would continue to serve prison time for that crime long into the future, without the benefit of a fair, reviewable hearing in which the government is forced to justify his further detention. Indeed, given the unlikelihood of U.S. relations with Cuba improving any time soon to the point where Cuba would accept Respondent back, Respondent's "indefinite" prison sentence may well turn out to be permanent. *See Zadvydas*, 533 U.S. at 691 ("The civil confinement here at issue is not limited, but potentially

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[4] *See* Interview with Sergio Suarez Martinez, Detainee [Respondent], INS Service Processing Center, San Pedro, Cal. (Oct. 19, 2001) ("They just lock us up and throw away the key . . . . I understand that I made a mistake, but I already did my time for that. Here I don't even know how much time I have to do."), *quoted in* Michelle Carey, Comment, *"You Don't Know If They'll Let You Out in One Day, One Year, or Ten Years . . .": Indefinite Detention of Immigrants After* Zadvydas v. Davis, 24 Chicano-Latino L. Rev. 12, 12 & n.1, 17 (2003) (explaining the "psychological toll" of indefinite detention on the detainee).

permanent."). This is neither morally acceptable nor reasonable.

B. This Court Recently Embraced *Amici*'s View as It Relates to the Indefinite Imprisonment of Lawful Permanent Residents.

While *amici* and other religious groups long have spoken out against unjust punishment of aliens, this Court put an exclamation point on this view when it issued its opinion in *Zadvydas v. Davis*. In *Zadvydas*, this Court interpreted the post-removal-period statute, 8 U.S.C. § 1231(a)(6),[5] to limit "an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." 533 U.S. at 689. Specifically, this Court held that a former lawful permanent resident who demonstrates there is no significant likelihood of removal in the reasonably foreseeable future generally may not be detained under § 1231(a)(6) for more than six months after being ordered removed. *Zadvydas*, 533 U.S. at 700-01. This Court found support for its decision in both the statute itself and in the

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[5] The statute provides in pertinent part:

> An alien ordered removed [1] who is inadmissible . . . [2] [or] removable [as a result of violations of status requirements or entry conditions, violations of criminal law, or reasons of security or foreign policy] or [3] who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to [certain] terms of supervision . . . .

8 U.S.C. § 1231(a)(6), *quoted in Zadvydas*, 533 U.S. at 682.

inherent due process rights of all "'persons' within the United States." *Id.* at 693.

In *Zadvydas*, two alien petitioners, each of whom previously had been lawfully admitted into the United States, were ordered removed following multiple convictions and sentences for crimes such as attempted burglary, theft, and manslaughter in connection with a gang-related shooting. *Id.* at 684-85. Neither could be returned to his country of origin, however, due to the absence of an agreement between that country and the United States. *Id.* In ruling on a challenge to the prolonged detention of these aliens, this Court held that "the [post-removal-period] statute, read in light of the Constitution's demands, . . . does not permit indefinite detention." *Id.* at 689 (reversing the Fifth Circuit and generally affirming the Ninth Circuit).

The detainees before this Court in *Zadvydas* were former lawful permanent residents, and this Court acknowledged that "[a]liens who have not yet gained initial admission to this country would present a very different question." *Id.* at 682. Still, this Court's reasoning and interpretation of the post-removal-period statute lead to the inescapable conclusion that immigrant parolees like Respondent, who have lived in the United States for many years but who nonetheless are technically considered to have "not yet gained initial admission to this country," should enjoy the same protections afforded to former lawful permanent residents in *Zadvydas*.

In this case, Respondent is a Mariel Cuban[6] who was affirmatively paroled into the United States in 1980,

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[6] Respondent arrived in the United States as part of the "Freedom Flotilla" from Mariel Harbor. The State Department's and President (Continued . . .)

and has been living here ever since. *See* Brief of *Amici Curiae* Florida Immigration Advocacy Center and Rafael Penalver at 17-27, *Benitez v. Mata*, No. 03-7434 (filed Feb. 23, 2004) (describing circumstances of the Mariel boatlift), *available at* 2004 WL 354193. He subsequently was ordered removed on the basis of past criminal conduct and was taken into immigration custody in 2001 following the completion of his criminal sentence. Were it not for the Ninth Circuit's decision that *Zadvydas* applies to this case, which the government now seeks to overturn, he likely still would be imprisoned even though he finished serving his criminal sentence more than three years ago.

Given the political climate in Cuba, Respondent – like the aliens in *Zadvydas* – has no realistic expectation of removal in the foreseeable future. *See Borrero*, 325 F.3d at 1009-10 (Heaney, J., dissenting) ("[S]tatus as a Mariel Cuban provides good reason to believe [a] removal order will not be carried out in the reasonably foreseeable future."). Accordingly, under the regime advocated by the government, short of a fortuitous U.S. and Cuban rapprochement, Respondent could be imprisoned for the rest of his life, subject only to the government's unreviewable discretion. There is no legitimate justification, however, to deny Respondent the basic dignity and worth recently accorded to other aliens by this Court in *Zadvydas*.

Carter's actions in response to this exodus have been interpreted and perceived as an "invitation" by the United States to Cubans seeking "freedom from Communist domination and from economic deprivation . . . ." *Fernandez-Roque v. Smith*, 622 F. Supp. 887, 897 & n.16, 898-99 (N.D. Ga. 1985) (emphasis omitted). Indeed, President Carter welcomed these Cubans to the United States with "an open heart and open arms." *Id.* at 897 & n.16 (emphasis omitted).

C. The Religious Community Encourages the Use of Release Alternatives over Indefinite Detention.

Indefinite detention in this case is particularly punitive in light of the availability and efficacy of alternatives to detention. These alternatives are more humane and therefore more consistent with shared community and religious values.

Religious organizations have long supported release alternatives to immigration detention,[7] particularly when it is indefinite and prolonged, as is the case here. For example, the United States Conference of Catholic Bishops urges that "[a]lternatives to detention should be explored where possible." Mandatory Detention, United States Conference of Catholic Bishops, Office of Migration & Refugee Services (Dec. 19, 2003) (quoting the U.S. Bishops' statement entitled "One Family Under God"), *available at* http://www.usccb.org/mrs/detention.htm. In addition, in testimony before a Congressional subcommittee, Bishop Thomas Wenski highlighted specific examples to demonstrate the success of alternatives to release. *See INS and the Executive Office for Immigration Review: Hearing Before the Subcomm. on Immigration & Claims of the House Comm. on the Judiciary*, 107th Cong. 20-30 (statement of Bishop Thomas Wenski, Auxiliary Bishop of Miami, National Conference of Catholic Bishops' Committee on Migration) (testifying that "workable alternatives to detention exist"). Bishop Wenski

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[7] *See, e.g.*, Lutheran Immigration and Refugee Service, America: A Freedom Country, at 34-37, 41 (2004) (describing examples of release alternatives to immigration detention), *available at* http://www.lirs.org/InfoRes/PDFs/AsylumStorybook.pdf.

underscored the "remarkable" success of a recent INS-funded pilot project that allowed for the supervised release of more than five hundred noncitizens in categories including "individuals in removal proceedings due to a criminal conviction," and of an INS-supported model that finds jobs, housing, and needed counseling for long-term detainees. *See id.* at 27. He concluded by recommending that the subcommittee "direct the INS to pursue a program of providing alternatives to detention" and "provid[e] a more humane and compassionate response to individuals currently detained." *Id.* at 26-27.

The statute at issue here, § 1231(a)(6), specifically authorizes supervised release as an alternative to detention: "An alien ordered removed . . . may be detained beyond the removal period ***and, if released, shall be subject to the terms of supervision in paragraph (3)***." 8 U.S.C. § 1231(a)(6) (emphasis added). Thus, pursuant to the statute, Respondent, like any immigrant parolee who is released, would remain subject to supervision under regulations prescribed by the Attorney General.[8]

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[8] 8 U.S.C. § 1231(a)(3), entitled "Supervision after 90-day period," provides:

> If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien –
>
> (A) to appear before an immigration officer periodically for identification;
>
> (B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;

(Continued . . .)

In addressing the government's argument in *Zadvydas* that resident aliens' due process rights were "'greatly diminished' by their lack of a legal right to 'live at large in this country,'" 533 U.S. at 696, the Court emphasized that "[t]he choice . . . is not between imprisonment and the alien 'living at large.' It is between imprisonment and supervision under release conditions that may not be violated." *Id.* (citation omitted); *see also Borrero*, 325 F.3d at 1010-11 (Heaney, J., dissenting) (citations omitted) (agreeing with the district court's proposal of supervised release "because it is ethical, constitutional, and soundly supported by federal statute, and Supreme Court precedent"); *Lin Guo Xi v. INS*, 298 F.3d 832, 834 (9th Cir. 2002) (reversing the district court's dismissal of Lin's habeas petition and noting that "on remand Lin will be entitled to supervised release if he can demonstrate that there is no significant likelihood of his removal to China in the reasonably foreseeable future").

Amici submit that the government should be required to pursue release alternatives as the more ethical and humane – as well as the more constitutionally sound and statutorily consistent – solution in a case such as this, and should not be allowed to resort to indefinite detention except in the most compelling circumstances and where accompanied by adequate procedural protections. Release alternatives to indefinite detention are particularly justified in this case because Respondent already has completed

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(C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and

(D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

serving his sentence for a criminal conviction, yet is facing continued imprisonment solely because the government is unable to effect his removal. The proposed course of supervised release will ensure the government's right to monitor Respondent such that if he violates a condition of his release, the government may return him to detention, subject to legitimate process.

D. All Individuals, Including Immigrant Parolees Living in Our Midst, Are Persons of Dignity and Worth Who Have Inherent Due Process Rights.

It is a fundamental principle shared among a broad cross-section of religious organizations that each human being is a person of inherent dignity and worth.[9] As a person of inherent dignity and worth, each human being is entitled to certain inalienable rights.[10] While *amici* would not go so far as to argue that all people present in this country are entitled to the same rights no matter what their legal status, it is important to recognize that religious traditions often do call for equal treatment of aliens and natives. Thus, while *amici* do not argue herein that immigrant parolees are entitled to ***like*** treatment, they do

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9 *See, e.g.*, National Council of Churches, 2002 General Assembly, Resolution After September 11, 2001: Public Policy Considerations for the United States of America (adopted Nov. 16, 2002) (affirming the "inherent dignity of all persons"), *available at* http://www.ncccusa.org/news/02news97b.html.

10 "[T]he principle of equal rights for citizens and non-citizens alike permeates not only Jewish tradition, but [with few exceptions] the American legal tradition as well." Religious Action Center of Reform Judaism, Issue in Focus: Immigration and Refugees (last updated Jan. 15, 2003), *available at* http://www.rac.org/issues/issueir.html.

argue that immigrant parolees, as human beings living in this country, should have ***some*** significant, fundamental rights under the law.

Among these fundamental rights is the right to be free from punishment at the hands of the government – whether labeled prolonged imprisonment or indefinite civil detention – without due process of law. This right applies to immigrant parolees just as it does to resident aliens and even undocumented aliens, particularly where, as here, there is no real possibility of removal within the reasonably foreseeable future. *See Borrero*, 325 F.3d at 1008 (Heaney, J., dissenting) (finding the majority's effective condemnation of a Mariel Cuban parolee to "indefinite detention because he is countryless, despite completing his time in prison for his criminal acts . . . [a] course of action [that] shocks the conscience and is neither ethical nor constitutional . . . [and] is contrary to other circuits that have addressed the matter").

1. Religious Doctrine Holds a Special Concern for the Immigrant.

Amici submit that immigrant parolees like Respondent are entitled to certain basic human rights, even though they have not been formally "admitted" to this country. This argument is supported by various religious writings advancing the notion that "strangers" such as Respondent not only should be accorded basic human rights, but in fact should receive special care and consideration. Indeed, Jewish and Christian scripture and leaders repeatedly call on the community to watch out for the alien. *See, e.g.*, Lutheran Immigration and Refugee Service, Mission and Values ("In response to God's love in Christ, we welcome the stranger, bringing new hope and new life through ministries of service and justice."),

available at http://www.lirs.org/who/mission.htm.[11] As Bishop Thomas Wenski, Auxiliary Bishop of Miami, stated at the National Conference of Catholic Bishops' Committee on Migration, "[T]he Church . . . is required by the Gospel and by its long tradition to promote and defend the human rights and dignity of people on the move . . . ."[12] Thus, humane treatment of immigrants is of fundamental importance throughout U.S. religious doctrine.

In some U.S. religions the status of the immigrant has particular resonance, as followers have immigrant roots both within their religion and as part of an immigrant nation. For example, the American Hebrew Congregation reminds its followers: "Our people were and continue to be immigrants to this nation. . . . Our tradition demands of us concern for the stranger in our midst." The Union of American Hebrew Congregations, A Resolution on

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[11] *See also* Episcopal Migration Ministries, Theological Premises ("No leap of theology is required to place ministry to displaced, uprooted persons in a fundamental relationship to our Christian calling . . . [and to] 'strive for justice . . . and respect the dignity of every human being'"), *available at* http://dfms.org/3687_32097_ENG_HTM.htm?menu=menu3204; Resolution of the 73rd General Convention of The Episcopal Church, The Episcopal Church in Service to Refugees and Immigrants (July 2000) ("The Church seeks to redress laws and regulations which fail to offer fair and just treatment . . . , to amend policies which overlook compelling family and other humanitarian considerations in carrying out deportation policies, and to assist in the fulfillment of a more just and equitable immigration system."), *available at* http://www.churchpublishing.org/general_convention/pdf_blue_2000/10-execcouncil.pdf.

[12] *INS and the Executive Office for Immigration Review: Hearing supra*, at 20-21 (quoting National Conference of Catholic Bishops, "Resolution on the Pastoral Concern of the Church for People on the Move" (Nov. 11, 1976)).

Immigration Adopted by the General Assembly, at ¶¶ 2-3 (Dec. 3, 1995), *available at* http://uahc.org/conv/adres/imm.html.[13] Similarly, the Episcopal Migration Ministries website states: "To be linked to our immigrant origins and to affirm our nation as one having a vibrant immigrant tradition is to recall our roots as a basis for identifying with those who are repeating, although often under more traumatic circumstances, the journey . . . ." Episcopal Migration Ministries, Theological Premises, *supra* (quotation marks omitted).[14] And referring to a more recent history, some in the Lutheran Church in America recognize that following World War II, "one out of every six Lutherans in the world was a refugee or displaced person." Evangelical Lutheran Church in America, What We Say About Public Life: Immigration, at ¶ 8 (Nov. 16, 1998), *available at* http://www.elca.org/socialstatements/immigration/.[15]

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[13] *See also* Religious Action Center of Reform Judaism, *supra* (noting that as "inheritors of an immigrant history," Jews have both a "unique responsibility . . . to ensure that the rights of non-citizens are not trampled upon today" and a "traditional appreciation for, and interest in, maintaining the civil liberties that have allowed us to thrive in this country").

[14] *Cf.* Mennonite Central Committee, U.S. Guide to Immigration, Biblical Reflection and Church Responses: Standing with Immigrants, at ¶ 2 (2002) ("We believe that God calls us to be accepting of immigrants, because we, too, are sojourners . . . ." (citation omitted)), *available at* http://www.mennonitecc.ca/us/washington/immigration.html.

[15] *See also id.* at ¶ 19 (encouraging members, "in light of our history and our ministry with newcomers, . . . to support just laws that serve the common good"; "We draw on the best of our nation's traditions as a refuge and haven for the persecuted and destitute when we affirm that

(Continued . . .)

Moreover, providing refuge for others fleeing persecution – such as the Mariel Cubans – also is a value that runs deep in the faiths of religious organizations. These values are consistent with our nation's history, in which many religious communities emigrated after fleeing persecution in their home countries for their religious and political views.

2. A Morally Fair and Humane Immigration Policy Can Protect the Rights of Immigrant Parolees without Sacrificing National Security.

Migration policy should honor the key principles of fair and humane process and refugee protection. It is inconsistent with these key principles for the government to indefinitely detain immigrants whose countries will not take them back while subjecting them and their families, many of whom are U.S. citizens or legal residents, to immense suffering.[16] In seeking rights for a seemingly forgotten class of persons – the immigrant parolee – *amici* do not seek to unduly limit Congress' ability to remove inadmissible aliens like Respondent who are paroled into

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'we support a generous policy of welcome for refugees and immigrants.'").

[16] *See Review of Department of Justice Immigration Detention Policies: Hearing*, *supra*, at 56-61 (2001) (material submitted for the hearing record by Ralston H. Deffenbaugh, Jr., President, Lutheran Immigration and Refugee Services); *see also* Physicians for Human Rights Study, From Persecution to Prison: the Health Consequences of the Detention of Asylum Seekers (June 2003) (documenting the high level of suffering on the part of indefinite-term detainees), *available at* http://www.phrusa.org/campaigns/asylum_network/detention_execsummary/detention_pdf.pdf; Carey, *supra*, at 12 & n.1, 17 (same).

the country and subsequently commit acts that subject them to removal. Indeed, in limiting the government's ability to indefinitely detain resident aliens, this Court in *Zadvydas* noted the limitations of its holding: "[W]e nowhere deny the right of Congress to remove aliens, to subject them to supervision with conditions when released from detention, or to incarcerate them where appropriate for violations of those conditions." 533 U.S. at 695. A finding by this Court that immigrant parolees, like the resident aliens in *Zadvydas*, cannot be detained indefinitely absent some strong countervailing governmental interest would not unduly interfere with Congress' ability to set immigration policy. Such a finding, however, would be consistent with the fundamental moral and ethical tenets of the various religious organizations represented by *amici* herein, as well as with this Court's interpretation of the post-removal-period statute and the Due Process Clause.

The events of September 11, 2001 have heightened the need to scrutinize those foreigners who are allowed to cross our borders. Neither *amici* nor this Court need interfere with such scrutiny, which is necessary to protect the nation. However, while "governments have an obligation to protect people from violence and to provide security for all who live within their borders," they also "have an obligation to preserve and defend human rights" and "respect ... the inherent dignity of all persons." National Council of Churches, 2002 General Assembly, Resolution After September 11, 2001, *supra*.

This Court rightly took into account in *Zadvydas* the need to balance the government's interest in protecting our borders and citizens with the human and due process rights of resident aliens, finding that special circumstances such as a threat of terrorism might justify detention beyond the presumptive six-month period. 533 U.S. at 690-91.

Indeed, in *Mezei*, the case generally relied upon to justify a distinction between the rights extended to inadmissible as opposed to admitted aliens subject to removal, the Court "explicitly grounded its decision in the special circumstances of a national emergency and the determination by the Attorney General that Mezei presented a threat to national security." *Rosales-Garcia v. Holland*, 322 F.3d 386, 413-14 (6th Cir. 2003) (en banc), *cert. denied*, 539 U.S. 941 (2003) (discussing *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953)). The *Mezei* Court cited The Passport Act of 1918 as support for the Attorney General's authority to exclude and indefinitely detain Mezei. *See Mezei*, 345 U.S. at 210. Respondent, unlike Mezei, poses no such national security concern, and there is no argument or allegation by the government otherwise. Accordingly, where, as here, the government cannot meet its burden to demonstrate special circumstances warranting indefinite detention, a fair migration policy mandates that an immigrant parolee be released – with conditions – rather than be jailed indefinitely while waiting for a removal that likely never will come.

3. Statutory and Constitutional Law Both Support *Amici*'s Plea to Consider the Dignity and Worth of Immigrant Parolees along with Other Aliens.

Amici's views are based on and consistent with religious teachings and traditions among many U.S. religions. Yet, *amici* do not ask this Court to interpret the law of this land based solely on these teachings and traditions. Rather, *amici* also rely on this Court's own recent decision, which, while based on statutory and

constitutional construction, is in harmony with moral and ethical principles.

a. This Court's Interpretation of the Post-Removal-Period Statute Applies to Immigrant Parolees.

First, *amici*'s view that the indefinite detention of immigrant parolees in these circumstances is wrong and violative of human dignity is consistent with the express language of the post-removal-period statute, 8 U.S.C. § 1231(a)(6), as construed by this Court. In *Zadvydas*, the Court intepreted the post-removal-period statute to limit to a reasonable time an alien's post-removal-period detention: "In our view, the statute, read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. It does not permit indefinite detention." 533 U.S. at 689.

Section 1231(a)(6) itself does not distinguish between removal of resident aliens and immigrant parolees. Indeed, on its face § 1231(a)(6) applies to both types of aliens – resident and immigrant – once they have been ordered removed. *See Zadvydas*, 533 U.S. at 688. Thus, while Congress no doubt gave the government the legal authority to detain aliens, including both resident and inadmissible aliens, beyond the initial ninety day removal period, this Court made clear in *Zadvydas* that the government's authority is not without limits. And, as Justice Kennedy wrote in his dissenting opinion in *Zadvydas*, to conclude that inadmissible and removable aliens can be treated differently with regard to how long they may be detained "is not a plausible construction of

§ 1231(a)(6)," as the "text does not admit of this possibility." 533 U.S. at 710 (Kennedy, J., dissenting).

Although in *Zadvydas* this Court did not squarely address the issue of indefinite detention of immigrant parolees, at least two circuit courts of appeal have addressed it. Relying on *Zadvydas*, both the Sixth and Ninth Circuits recently concluded that the Supreme Court's construction of § 1231(a)(6) in *Zadvydas* applies equally to resident aliens and inadmissible aliens subject to removal. *Rosales-Garcia*, 322 F.3d at 404-05 ("On the basis of the plain language of the provision, we find it difficult to believe that the Supreme Court in *Zadvydas* could interpret § 1231(a)(6) as containing a reasonableness limitation for aliens who are removable on grounds of deportability but not for aliens who are removable on grounds of inadmissibility."); *Lin Guo Xi*, 298 F.3d at 835, 839 (concluding that the Supreme Court's construction of § 1231(a)(6) in *Zadvydas* applied to an inadmissible alien; explaining that the provision "does not draw any distinction between individuals who are removable on grounds of inadmissibility and those removable on grounds of deportability" and that the right to make "a decision to rearrange or rewrite the statute falls within the legislative, not the judicial, prerogative"). This Court should affirm these logical applications of *Zadvydas*, thereby bringing the law into better alignment with the moral and ethical principles of our nation, which demand humane treatment of resident aliens and immigrant parolees alike.

The government's purported justification for treating immigrant parolees like Respondent differently from the former lawful permanent residents in *Zadvydas* is the so-called "entry fiction" doctrine. Under this doctrine, immigrant parolees living in the United States, even for as long as Respondent has, are treated as if they just arrived at

the border and are seeking to enter the United States for the first time. (Pet'rs' Br. at 14-24.) *Amici* do not herein challenge the "entry fiction" doctrine insofar as it affects the statutory status of a parolee under immigration law. Nor would *amici* deny the government the important right to control immigration into this country, including decisions about who is entitled to "admission." *Amici* do reject the entry fiction doctrine, however, insofar as it is used to deny certain inalienable rights to immigrant parolees, especially those like Respondent who have been living in this country for many years.[17] One of these inalienable rights is the right to be free from indefinite detention without the opportunity to be heard in a neutral, reviewable proceeding.

b. The Constitution Requires That Immigrant Parolees Like Respondent, Who Actually Live in this Country, Not Be Denied Their Liberty Absent Meaningful Due Process.

The right to due process – particularly before being stripped of one's liberty – is fundamental to teachings throughout an array of religious bodies. "All faiths share th[e] basic teaching" that "the denial of rights that inhere in the worth of human beings before God [is] not only a crime against humanity. . . . [but] a sin against God." Robert W. Edgar, National Council of Churches USA, Statement on Due Process and the Guantanamo Prisoners (Mar. 8, 2004), *available at* http://www.ncccusa.org/news/04edgarguantanamostatement.html. It also is a fundamental right provided in the U.S. Constitution. U.S. Const. amend. V. "The great strength of the American system of governance is that it provides its inhabitants with inalienable individual rights, including the right to due process, the right to be punished in proportion to the crime committed, the right not to be imprisoned without cause." Religious Action Center of Reform Judaism, *supra*.

This Court recognized that the fundamental due process right to freedom from physical restraint applies not only to citizens, but to all "'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693 (citing *Plyler v. Doe*, 457 U.S. 202, 210 (1982); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Mezei*, 345 U.S. at 212; *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 & n.5, 597-98 (1953); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886)). While this Court in *Zadvydas* did not address whether this right applies to immigrant parolees, its focus on territoriality and physical presence generally supports extending its holding in that case to immigrant parolees, particularly those who have been living in this country for over two decades. *See Zadvydas*, 533 U.S. at 694 (citing with approval *Wong Wing v. United States*, 163 U.S. 228, 238 (1896), in which the Court "held that punitive measures could not be imposed upon aliens ordered removed because 'all persons within the territory of the United States are entitled to the protection' of the Constitution"); *see also Chi Thon Ngo*, 192 F.3d at 396 ("Even an excludable alien is a 'person' for purposes of the Fifth Amendment . . . ." (citing *Wong Wing*, 163 U.S. at 238)); *Wilson v. Zeithern*, 265 F. Supp. 2d 628, 634 n.9 (E.D. Va. 2003) (suggesting that *Zadvydas*, in reaffirming the "territorial distinction," appeared to imply that

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[17] *Amici* have varying views on whether the same rights inhere to non-citizens who literally have been stopped at the border and not paroled into the United States. The Court need not, however, resolve that issue here.

immigrant parolees enjoy a "limited liberty interest based on their physical presence within the United States").[18] Indeed, even in *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990), where the Court rejected the respondent's claim that the Fourth Amendment's protection against unlawful searches and seizures extended to aliens not present in the United States, the Court was careful to distinguish the scope of the Fourth Amendment – which it found did not extend to people outside the United States – from that of the Fifth Amendment. *Id.* at 264-65 (construing the Fourth Amendment's use of the word "people" to be narrower than the Fifth Amendment's use of the word "persons").

In *Zadvydas*, this Court explained that government detention of persons within the United States violates the Due Process Clause of the Fifth Amendment "unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, or, in certain special and 'narrow' non-punitive 'circumstances,' . . . such as harm-threatening

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[18] The logical and moral fallacy of granting due process rights in these circumstances to resident aliens but not to immigrant parolees is highlighted by Petitioners' own brief. Petitioners argue for a hierarchy of due process rights to be accorded aliens of different status, with immigrant parolees making up the bottom rung of the ladder, below undocumented aliens. (Pet'rs' Br. at 2-3.) Petitioners' own justification for this purported hierarchy, however, actually supports Respondent's position here. Citing the 1950 Supreme Court case *Johnson v. Eisentrager*, 339 U.S. 763, 770 (1950), Petitioners state that "'[t]he alien . . . has been accorded a generous and ascending scale of rights as he increases his identity with our society.'" (Pet'rs' Br. at 3); *see also Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("[O]nce an alien gains admission to our country and begins to develop the ties that go with permanent residence his constitutional status changes accordingly."). That very justification works in favor of a parolee like Respondent, who has lived in this country for twenty-four years.

mental illness." 533 U.S. at 690. The Court concluded: "The proceedings at issue here are civil, not criminal, and we assume that they are nonpunitive in purpose and effect. There is no sufficiently strong special justification here for indefinite civil detention . . . ." *Id.* at 690. Although, as pointed out by the Court, civil detention technically is "nonpunitive," there can be no mistaking that in practice it absolutely constitutes a punishment, which must be meted out only with due process. *See Addington v. Texas*, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.").

In the case of an alien subject to a removal order that cannot be effectuated due to an impasse in the United States' relations with the alien's nation of origin (for example, Cuba), due process would require a meaningful hearing or other proceeding at which the government would have to justify a detention in excess of the six-month presumptively reasonable period outlined in *Zadvydas*. That hearing or proceeding could not merely be an unreviewable administrative proceeding. As this Court has stated: "[T]he Constitution may well preclude granting 'an administrative body the unreviewable authority to make determinations implicating fundamental rights.' The Constitution demands greater procedural protection even for property." *Zadvydas*, 533 U.S. at 692 (citations omitted).

This Court has recognized two possible justifications for a prolonged detention pending removal: "'ensuring the appearance of aliens at future immigration

proceedings'[19] and 'preventing danger to the community.'"[20] *Id.* at 690 (citation omitted). Regarding the second justification, the Court pointed out that it has "upheld preventive detention based on dangerousness only when limited to ***specially dangerous individuals*** and subject to ***strong procedural protections***." *Id.* at 690-91 (emphases added). Yet the government would allow indefinite detention of immigrant parolees like Respondent without any meaningful showing of necessity. Denying immigrant parolees these basic due process rights likely would make many of them – particularly Mariel Cubans like Respondent – inmates for life.

CONCLUSION

In light of the important human rights and ethical issues which are at the core of this case, *amici* submit that their perspectives are valuable to the Court's consideration. In particular, *amici* share the view that immigrant parolees should not be punished with imprisonment without first being given the opportunity for a fair and meaningful hearing. As indefinite detention, however labeled, is still punishment by imprisonment, immigrant parolees must not be detained indefinitely absent due process and a strong showing of necessity. Therefore, in accordance with this view, *amici* respectfully request that the Court affirm the Ninth Circuit's decision.

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[19] The Court in *Zadvydas* concluded that the "first justification – preventing flight – is weak or nonexistent where removal seems a remote possibility at best." 533 U.S. at 690. It also stated that if, as here, "removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699-700.

[20] There is no allegation in this case that Respondent is a threat to national security. If there were, and the government could demonstrate as much in a reviewable proceeding, then it would have the ability to detain Respondent beyond the presumptively reasonable six-month period.

Respectfully submitted.

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APPENDIX

AMICI CURIAE

INDIVIDUAL STATEMENTS OF INTEREST

CHURCH WORLD SERVICE

Church World Service (CWS) is the relief, development, and refugee assistance ministry of thirty-six Protestant, Orthodox, and Anglican denominations comprising fifty million United States Christians, along with partnerships in more than eighty countries. This brief is consistent with CWS's belief in the fundamental dignity of all human beings, including the immigrants in our nation. CWS advocates for oppressed people seeking asylum in our land and for just standards to ensure the fair and civilized treatment of refugees and displaced persons worldwide. CWS urges our own nation, a nation of immigrants, to lead the way. Through active dialogue and outreach we seek to make a significant and positive difference in the lives of people whose needs might not otherwise be served.

THE EPISCOPAL CHURCH

The Episcopal Church is made up of over 2.3 million baptized members in approximately 7,300 parishes across the United States and a few related dioceses outside the United States. This brief is consistent with the policies adopted by the July 2000 Resolution of the 73rd General Convention of The Episcopal Church, *The Episcopal Church in Service to Refugees and Immigrants*:

> The Church seeks to redress laws and regulations which fail to offer fair and just

> treatment . . . , to amend policies which overlook compelling family and other humanitarian considerations in carrying out deportation policies, and to assist in the fulfillment of a more just and equitable immigration system.

EVANGELICAL LUTHERAN CHURCH IN AMERICA

The Evangelical Lutheran Church in America (ELCA) is the largest Lutheran denomination in North America and the fifth largest Protestant church body in the United States. The ELCA has approximately 11,000 member congregations, which in turn have approximately 5.1 million individual members nationwide. Through the adoption of social statements and messages by the ELCA Churchwide Assembly, the Church's highest legislative body, and by the Church Council, the ELCA board of directors, the ELCA adopts policy positions and expresses concerns on issues of public importance, such as immigration and refugee policies.

In November 1998, the ELCA Board of the Division for Church in Society approved, and the Church Council adopted, this Church's message on immigration. Together with the Lutheran Church-Missouri Synod, and the Latvian Evangelical Lutheran Church in America, the ELCA sponsors the Lutheran Immigration and Refugee Service (LIRS), a cooperative, national agency to carry out the Churches' ministry with immigrants and refugees.

CLIFTON KIRKPATRICK, STATED CLERK OF THE PRESBYTERIAN CHURCH (U.S.A.)

Clifton Kirkpatrick, as Stated Clerk of the General Assembly, is the Senior Continuing Officer of the

Presbyterian Church (U.S.A.). The Presbyterian Church (U.S.A.) is a national Christian denomination with nearly 2.5 million members in more than 11,200 congregations, organized into 173 presbyteries under the jurisdiction of 16 synods. Through its antecedent religious bodies, it has existed as an organized religious denomination within the current boundaries of the United States since 1706. This brief is consistent with the policies adopted by the General Assembly regarding aliens living and working within the United States. The 2004 General Assembly recently adopted the following resolution:

> Diversity testifies to the glory of God's creation. In a Christian vision, diversity no longer divides and separates or serves as a basis for injustice, but is embraced and transformed through Christ's reconciling activity. Genuine reconciliation takes place through doing justice; namely ensuring that immigrants' personhood is fully respected, the immigrants' presence is acknowledged and welcomed, the immigrants' rights are fully protected, and immigrants are given the opportunity to be full participants in American life. We commit to Advocate for the reform of current immigration policies and procedures to ensure a more timely and humane process.

The General Assembly does not claim to speak for all Presbyterians, nor are its decisions binding on the membership of the Presbyterian Church. The General Assembly is the highest legislative and interpretive body of the denomination. As such, its statements are considered worthy of the respect and prayerful consideration of all the denomination's members.

MENNONITE CENTRAL COMMITTEE U.S. WASHINGTON OFFICE

Since its inception in 1920, Mennonite Central Committee (MCC) has responded to the needs of emigrating peoples through material aid and spiritual support. As an agency of Mennonite and Brethren in Christ churches in North America, which began as immigrant churches, MCC – through relief, development, peace building and advocacy efforts – works to address the reasons many persons are forced to emigrate, but also to welcome immigrants when they do arrive in the United States and Canada. Injustice toward immigrants – including denial of basic necessities such as food, housing and health care; and distortions of civil rights by labor exploitation, racial profiling or indefinite detention – is contrary to MCC's convictions.

The MCC United States Washington Office, established in 1968, is MCC's advocacy office that provides and encourages the Church's prophetic witness to the way of Christ on matters of United States public policy. The office is guided by the biblical themes of justice for all, with special concern for poor and oppressed people (Deuteronomy 24:17-22); nonviolent peacemaking (Matthew 5:9, 38-48); dismantling racism and sexism (Galatians 3:25-28; Ephesians 2:11-22); human rights, including freedom of conscience and religious practice (Proverbs 31:8-9; Luke 4:18-19; Acts 5:17-42); and care for the earth (Genesis 1:28-30; Psalms 8:5-8).

The MCC United States Washington Office is guided in its immigration advocacy by a 1998 MCC United States Executive Committee statement which says in part: "Scripture teaches that 'when a stranger sojourns with you in your land, you shall not do [the stranger] wrong. The

stranger who sojourns with you shall be to you as the native among you, and you shall love [the stranger] as yourself; for you were strangers in the land of Egypt' (Leviticus 19:33, 34). We believe that God calls us to be accepting of immigrants because we, too, are sojourners. By welcoming the stranger we have welcomed Jesus (Matthew 25:35). Because of God's clear call, we believe we must respond to the plight of immigrants in the United States." The MCC United States Washington Office is also guided by statements of its member denominations, for example: "As Christians, we believe we are called to welcome . . . sojourners in our congregations and communities, especially as our government creates increasingly harsh immigration laws in the name of fighting terrorism. Assumptions about identity make some people more vulnerable to political biases and discrimination than others. Our concerns about the status of immigrants in this country relate to how people are treated based on race, nationality, ethnicity and religious identity. We reject our country's mistreatment of immigrants, repent of our silence, and commit ourselves to act with and on behalf of our immigrant brothers and sisters, regardless of their legal status." (Mennonite Church USA Churchwide Statement on Immigration, 2003).

The MCC United States Washington Office believes that all people, regardless of race, legal status or country of origin, should have access to justice; and that no one, regardless of the policies of their nation of origin, should be subject to indefinite detention based upon their immigration status.

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE USA

The National Council of the Churches of Christ in the U.S.A. is the principal ecumenical organization in the United States with thirty-six Protestant, Orthodox and Anglican member communions (denominations) with a combined membership of more than fifty million Christians in nearly 140,000 congregations nationwide. Through the National Council of Churches, member communions join in a common witness through ministries of faith, education, public witness and justice. While we do not purport to speak for all members of the communions constituent to the National Council, we do speak for our policy-making body, the General Assembly, whose 350 members are selected by those communions in numbers proportionate to their size.

This *amici* brief is consistent with the National Council's policies and belief in the dignity of all people, which includes immigrants in the United States. We advocate for oppressed people in the United States and around the world, and work to make sure refugees, displaced persons and immigrants receive fair and proper treatment as human beings.

NATIONAL MINISTRIES, AMERICAN BAPTISTS CHURCHES, USA

The American Baptist Home Mission Society, also known as National Ministries, is the home mission and discipleship arm of the American Baptist Churches USA (ABCUSA), an evangelical, ecumenical, multiracial, mission-minded and socially concerned denomination with a global perspective. ABCUSA has 1.5 million members worshipping in 5,800 congregations throughout the United States and is one of the most racially diverse mainline denominations in the United States. It was one of the

founding denominations of Church World Service and has partnered with them in the resettlement of refugees and ministry to immigrants since 1948. Over the past fifty-six years American Baptists have sponsored over 91,000 refugees. Immigration and Refugee Services program has been located in National Ministries since 1955. This brief is consistent with the Policy Statement on Immigration and Refugee Policy adopted by the General Board of ABCUSA.

UNITARIAN UNIVERSALIST ASSOCIATION

The Unitarian Universalist Association is a religious association of more than one thousand congregations in the United States and elsewhere. Through its democratic process, the Association adopts resolutions consistent with its fundamental principles and purposes. The Association has adopted numerous resolutions supporting the civil liberties of citizens and non-citizens alike. The recently adopted 2004 resolution on civil liberties highlights the right of foreign nationals to due process and the presumption of innocence.